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FURTHER REPORT BY THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 4 OF SECURITY COUNCIL RESOLUTION 731 (1992)

1. The present further report is being submitted pursuant to paragraph 4 of Security Council resolution 731 (1992), by which the Council requested the Secretary-General to seek the cooperation of the Libyan Government to provide a full and effective response to the requests referred to in that resolution.

2. Following the circulation of the Secretary-General's earlier report on this subject, 1/ the Secretary-General met with the Permanent Representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America on 17 February 1992. They requested the Secretary-General to convey to the Libyan leader, Colonel Muammar Qaddafi, Leader of the First of September Revolution, the following points on behalf of their Governments:

(a) The three Governments consider that the statement by the Libyan Government delivered to the Secretary-General of the United Nations through the Permanent Representative of the Libyan Arab Jamahiriya in New York, in which the Libyan Arab Jamahiriya expresses its readiness to abide by the Security Council resolution and to cooperate fully with their requests as referred to in resolution 731 (1992), represents a step forward only if it is supported by action;

(b) In this connection, the three Governments support the request of the French Government and would like to be informed of the mechanism by which the Libyan authorities will hand over the records and documentation requested, and whatever else may be requested by the French examining magistrate, and of where and when the Libyan authorities intend to do so;

(c) The Governments of the States in question would further like to know the time, place and modality of the hand-over by the Libyan authorities of the two persons charged and the information and evidence requested and the precise measures that the Libyan Government intends to take in order to end support for terrorism in all its forms;

(d) The three Governments have no objection to the hand-over of the suspects and the information requested taking place through the

Secretary-General of the United Nations in accordance with paragraph 4 of resolution 731 (1992);

(e) The three Governments believe that their requests are clear and precise and that they do not require further clarification;

(f) With regard to the question of compensation, the three States seek to obtain assurances from the Libyan Arab Jamahiriya with regard to its responsibility in this connection.

3. Following consultations with the Libyan authorities, the Secretary-General again sent Under-Secretary-General Vasiliy Safronchuk to Tripoli to convey to Colonel Qaddafi a second message containing the above points and he asked the Libyan Leader to give him a precise and detailed reply.

4. Mr. Safronchuk first met with Colonel Qaddafi on 24 February 1992. He then travelled to Geneva on 25 February in order to report to the Secretary-General Colonel Qaddafi's reaction to his message. He then returned to the Libyan Arab Jamahiriya and met again with Colonel Qaddafi on 27 February. In the course of the two meetings the head of the Libyan State made the following points:

(a) There are constitutional obstructions preventing Colonel Qaddafi or the Libyan administration from handing over Libyan citizens abroad for trial in the absence of an extradition treaty;

(b) He may address an appeal to the Libyan people through the People's Committee, which might result in the removal of these obstructions. He did not indicate how long it would take to overcome the existing constitutional hurdles;

(c) Once the constitutional problems were solved, the Libyan Arab Jamahiriya could be inclined to consider France as the possible venue for a trial of the Libyan citizens; however, France had not requested that any suspects be handed over to it for trial;

(d) Although the Libyan authorities could not forcibly hand over the suspects for trial in a foreign country, the suspects were free to hand themselves over voluntarily and the Government of the Libyan Arab Jamahiriya had no intention of preventing them from doing so;

(e) The possibility of handing over the suspects to the authorities of third countries for trial may be considered. In this context Malta or any Arab country were mentioned by the Libyan Leader;

(f) Improvement of bilateral relations between the Libyan Arab Jamahiriya and the United States would make it possible to hand over the two suspects to the United States authorities;

(g) The Libyan Arab Jamahiriya is prepared to cooperate in every way possible to put an end to terrorist activities and sever its relations with all groups and organizations that target innocent civilians. It will not allow its territory, citizens or organizations to be used in any way for carrying out terrorist acts directly or indirectly. It is prepared to punish most severely anyone proven to be involved in such acts;

(h) It is premature to discuss the question of compensation, which can result only from a civil court decision. However, the Libyan Arab Jamahiriya will guarantee the payment of compensation awarded as a result of responsibility of its suspected citizens if they are unable to pay it themselves;

(i) The Libyan Arab Jamahiriya agrees to the French request. As a means of giving effect to these requests, the Libyan Arab Jamahiriya agrees to act on the French proposal that a judge come to the Libyan Arab Jamahiriya to investigate the case as he may see fit. It agrees to provide the French judge with a copy of the minutes of the investigation carried out by the Libyan judge;

(j) The Secretary of the People's Committee for Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya, Mr. Ibrahim M. Bishari, on 27 February 1992 addressed a letter to the Secretary-General of the United Nations in which some of these points are reiterated (see annex I). The Secretary-General received a second letter from the Secretary on 2 March 1992 (see annex II, enclosure).

5. On 26 February, while in Geneva the Secretary-General met with a special envoy of Colonel Qaddafi, Mr. Yusef Debri, Head of Libyan Intelligence, with whom the entire situation was reviewed.

6. From the foregoing, it will be seen that while resolution 731 (1992) has not yet been complied with, there has been a certain evolution in the position of the Libyan authorities since the Secretary-General's earlier report of 11 February 1992. 1/ The Security Council may wish to consider this in deciding on its future course of action.

Notes

1/ S/23574.

Annex I

Letter dated 27 February 1992 from the Secretary of the People's Committee for Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya addressed to the Secretary-General

[Original: Arabic]

Proceeding from the adherence of the Great Jamahiriya to the rules of international law and to respect for the provisions of the Charter of the United Nations,

In its desire to promote international peace and security, to strengthen friendly relations between States, to ensure stability in international relations, to condemn all modes of the threat or use of force and to condemn international terrorism,

Seeking to cooperate closely with the United Nations and its Secretary-General, and basing itself on the human rights covenants and laws that regard the right to litigation before a fair and impartial court as an essential guarantee of justice,

Understanding the role entrusted to the Secretary-General of the United Nations, and seeking to demonstrate its sincerity in meeting its international obligations,

The Jamahiriya, despite all the technical, legal and judicial difficulties raised by its national legislation, by international agreements, by the principles of sovereignty and by the Charter of the United Nations, with which we deem Security Council resolution 731 (1992) to be incompatible, nevertheless expresses its full readiness to cooperate with the Secretary-General of the United Nations in facilitating the task entrusted to him under paragraph 4 of Security Council resolution 731 (1992),

To that end, the Jamahiriya proposes the following mechanism:

1. It has no objection in principle to handing over the two suspects to the Office of the United Nations Development Programme in Tripoli for questioning.

2. The Secretary-General of the United Nations should undertake to form a legal committee made up of judges whose probity and impartiality are well attested in order to inquire into the facts, ascertain whether the charges made against the two suspects are well founded and conduct a comprehensive inquiry.

3. Should it become evident to the Secretary-General of the United Nations that the charge is well founded, the Jamahiriya will not oppose the hand-over of the two suspects, under his personal supervision, to a third party, while stressing that they should not again be handed over.

4. The Secretary-General of the United Nations should endeavour to provide all legal and judicial guarantees for the conduct of a just and fair trial based on the International Bill of Human Rights and the principles of international law.

With regard to the French requests

Libya agrees to the French requests. As a means of giving effect to these requests, the Jamahiriya agrees to act on the French proposal that a magistrate should come to Libya to investigate the case in the manner that he deems fit. It agrees to provide the French magistrate with a copy of the minutes of the investigation carried out by the Libyan judge.

With regard to the issue of terrorism

The Jamahiriya affirms its outright condemnation of terrorism in all its forms and whatever its source, and it denies the allegations concerning its involvement in any terrorist acts. Accordingly, it is prepared to undertake the following:

1. The Jamahiriya, denying this allegation, has no objection to the Secretary-General or his representative investigating the facts in the Jamahiriya in order to refute or confirm it. The Jamahiriya undertakes to provide all the facilities and information that the Secretary-General or his representative may deem it necessary to have in order to arrive at the truth. The Jamahiriya is of the view that it is possible to draw up an agreement, or bilateral or multilateral agreements, designating the ways and means necessary for the elimination of international terrorism, and it is prepared to enter into bilateral or multilateral discussions to that end.

2. Libya expresses its readiness to cooperate in any matter that may put an end to terrorist activities and to sever its relations with all groups and organizations which target innocent civilians.

3. Libya shall not, under any circumstances, permit the use of its territory, its nationals or its institutions for the perpetration, directly or indirectly, of any terrorist acts, and it is prepared to impose the severest penalties on those against whom involvement in such acts can be proved.

4. Libya undertakes to respect the national choices of all States and to build its relations on a foundation of mutual respect and non-interference in internal affairs.

The proposals contained in this draft shall be binding on Libya if they are accepted by the other party. The results arrived at, whatever they may be, shall be binding on all, a new chapter shall be opened in relations between the two sides, State terrorism against Libya shall end, there shall be a halt to threats and provocations against it, its territorial integrity, its

sovereignty and the integrity of its territorial waters shall be guaranteed, the economic boycott shall be ended, its political choices shall be respected and its name shall finally be removed from the roster of terrorism.

With regard to compensation

Despite the fact that discussion of the question of compensation is premature, since it would only follow from a civil judgement based on a criminal judgement, Libya guarantees the payment of any compensation that might be incurred by the responsibility of the two suspects who are its nationals in the event that they were unable to pay.

The Jamahiriya stresses to the Secretary-General and to the Security Council that all parties must contribute to cooperation and not one party alone. To this day, despite all the cooperation that the Jamahiriya has evinced and has demonstrated in practice, the three States in question have not responded to its legitimate request for them to provide it with the dossiers of the investigation on the basis of which the parties concerned presume to make charges against the two suspects. Saddened as it is at the lack of cooperation on the part of these parties, it requests you and the Council to intercede with them in this matter.

In conclusion, the Jamahiriya appreciates your role and salutes your contribution, and it affirms once more its readiness to cooperate in such a manner as to ensure the success of your endeavours.

(Signed) Ibrahim M. BISHARI
Secretary of the People's Committee for
Foreign Liaison and International
Cooperation

Annex II

Letter dated 2 March 1992 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General

[Original: Arabic]

I have the honour to transmit to you herewith the text of a letter addressed to you by Mr. Ibrahim M. Bishari, Secretary of the People's Committee for Foreign Liaison and International Cooperation.

(Signed) Ali Ahmed HOUDEIRI
Permanent Representative

Enclosure

Letter from the Secretary of the People's Committee for Foreign Liaison and International Cooperation of the Libyan Arab Jamahiriya addressed to the Secretary-General

Since the announcement of the presumed suspicion of two Libyan nationals in the matter of the regrettable incident involving Pan Am flight 103 - in which innocent people were victims and with regard to which, as before, I can only express the grief invoked in me by the incident and by the victims who died in it - the popular authorities in the Jamahiriya have taken the measures required in such cases by the law and by international covenants. The United Kingdom and the United States, however, submitted to the competent Libyan authorities requests for the extradition of the two Libyan nationals for the purpose of bringing them to trial themselves, and they have constantly insisted, despite the proposals made by the competent authorities in the Jamahiriya, on requesting extradition and nothing else, thereby overstepping the limits of our domestic law and international rules and customs.

As you know, the United Kingdom and the United States convened a meeting of the Security Council on the regrettable aircraft incident and succeeded in having the Council adopt a resolution urging the Jamahiriya to respond to their requests with regard to the relevant legal procedures. Following the adoption of the resolution, the Jamahiriya announced that it would respond in a manner in keeping with its sovereignty and the rule of law, and it took practical steps for the implementation of the resolution as it related to legal investigations.

In this connection, I should like to say that the Jamahiriya, a State Member of the United Nations, did not refuse extradition in itself. The domestic institutions of the Jamahiriya, however, whether administrative or judicial, were faced with a legal obstacle, namely that the Libyan law which has been in force for more than 30 years does not permit the extradition of Libyan nationals. This is a law which is fully in keeping with all the world's legal systems The competent authorities in the Jamahiriya could find nothing that would enable them to respond to the requests made by these States other than by violating the law, and this is something that cannot be done in any civilized State which is a Member of the United Nations. It is this that is the obstacle, and it is, as you can see, a legal obstacle and not by any means a political one. The Libyan authorities cannot bypass this legal obstacle or violate the rights of citizens protected by the law.

You are aware that the United Kingdom and the United States are intimating that they are about to convene another meeting of the Security Council in order to seek the adoption of another resolution on the same matter. It goes without saying that the convening of such a meeting and the adoption of a resolution, whatever its character might be, will change nothing. The legal obstacle indicated above will remain as it is, and it

cannot be altered by a decision of the Security Council, whether a recommendation or a binding resolution. It would be pointless to adopt such a resolution because of its futility and the impossibility of its implementation in light of the domestic law in force and of international rules and customs while the competent authorities proclaim that they have no objection to extradition or to trial in any locality.

I have sought to address this letter to you so that we may convey to you a picture of the legal situation as it really is. I should like to advise you, however, that the solution to this matter falls within the purview of the law and not elsewhere and that attempts to bypass the law, even by means of resolutions, binding or non-binding, would seem to be both unhelpful and unwarranted since there is no party that is deliberately raising objections. It is rather the law that has objections, and it is not rational to put pressure on the law by the adoption of resolutions by the Security Council or by any other body.

(Signed) Ibrahim M. BISHARI
Secretary of the People's Committee
for Foreign Liaison and International
Cooperation